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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,)	No. CR 98-40026 DLJ
)	
12 Plaintiff,)	STIPULATION REGARDING
13 vs.)	SENTENCE REDUCTION UNDER
)	U.S.S.G. AMENDMENT 706 (AS
14 RICHARD MYERS,)	AMENDED BY 711); ORDER
)	
15 Defendant.)	
_____)	

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17 **IT IS HEREBY STIPULATED AND AGREED**, by and between the parties acting
18 through their respective counsel, that:

- 19 1. The Court has indicated that it is making its own motion for a modification of the
20 defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2).
21 2. Defendant's original guideline calculation was as follows:
22 Total Offense Level: 27
23 Criminal History Category: IV
24 Guideline Range: 100-125
25 Mandatory Minimum: 60 months
26

- 1 3. Defendant was sentenced to 100 months imprisonment on July 29, 1998, plus 60 months,
2 consecutive, on a second count for violation of 18 U.S.C. § 924(c)..
- 3 4. Defendant's current projected release date is November 1, 2010.
- 4 5. Defendant is eligible for a modification of his sentence pursuant to 18 U.S.C. §
5 3582(c), USSG § 1B1.10(c), and Amendment 706 of the United States Sentencing Commission
6 Guidelines Manual.
- 7 6. Defendant's revised guideline calculation is as follows:
8 Total Offense Level: 25
9 Criminal History Category: IV
10 Guideline Range: 84-105
- 11 7. The parties have no reason to dispute the facts in the Reduction of Sentence Report
12 submitted to the Court by the probation office.
- 13 8. Based upon the foregoing, the parties hereby stipulate that a sentence of 94 months is
14 appropriate in this matter.
- 15 9. The parties further stipulate that all other aspects of the original judgment order including
16 the length of term of supervised release, all conditions of supervision, fines, restitution,
17 and special assessment remain as previously imposed.
- 18 10. Defendant stipulates that he waives and does not request a hearing in this matter pursuant
19 to Fed. R. Crim. P. 43, 18 U.S.C § 3582(c)(2); *United States v. Booker*, 543 U.S. 220
20 (2005) and *Kimbrough v. United States*, 128 S.Ct. 558 (2007); *United States v. Hicks*,
21 472 F.3d 1167 (9th Cir. 2007).
- 22 11. Defendant waives his right to appeal the district court's sentence.
- 23 12. Accordingly, the parties agree and stipulate that an amended judgment may be entered by
24 the Court in accordance with this stipulation pursuant to 18 U.S.C. § 3582(c) and USSG
25 § 1B1.10(c), Amendment 706 of the *United States Sentencing Commission Guidelines*
26 *Manual*.

IT IS SO STIPULATED:

/S/

Date: June 3, 2008

Rebecca Sullivan Silbert
Counsel for Richard Myers

/S/

Date: June 3, 2008

Daniel Kaleba
Assistant United States Attorney

ORDER

Based on the above stipulation, the Court hereby ORDERS the following:

1. The Court is making its own motion for a modification of the defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2);
2. **The original Judgment in the above-captioned case is AMENDED to impose a term of imprisonment of 94 months as to Count One, violation of 18 U.S.C. § 841(a)(1).**

All other aspects of the original judgment, including the 60 month consecutive sentence on Count Two, for violation of 18 U.S.C. § 924(c), the length of term of supervised release, all conditions of supervision, fines, restitution, and special assessment remain as previously imposed.

3. Defendant's original guideline calculation was as follows:

Total Offense Level: 27

Criminal History Category: IV

Guideline Range: 100-125

Mandatory Minimum: 60 months

1 Sentence Imposed: 100 months

2 4. Defendant is eligible for a modification of his sentence pursuant to 18 U.S.C. §
3 3582(c), USSG § 1B1.10(c), and Amendment 706 of the United States Sentencing Commission
4 Guidelines Manual;

5 5. Defendant's revised guideline calculation is as follows:

6 Total Offense Level: 25

7 Criminal History Category: IV

8 Guideline Range: 84-105

9 6. Defendant has waived his right to a hearing in this matter pursuant to Fed. R. Crim. P. 43,
10 18 U.S.C § 3582(c)(2); *United States v. Booker*, 543 U.S. 220 (2005) and *Kimbrough v.*
11 *United States*, 128 S.Ct. 558 (2007); *United States v. Hicks*, 472 F.3d 1167 (9th Cir.
12 2007).

13 7. Defendant has waived his right to appeal the sentence imposed by this Order.

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16 Date: June 4, 2008



Honorable D. Lowell Jensen
Judge, United States District Court